

1915(i) Policy

Conflict of Interest Standards 510-08

Individuals or entities that evaluate eligibility or conduct the independent evaluation of eligibility for the 1915(i), who are responsible for the independent assessment of need for HCBS, or who are responsible for the development of the service plan; cannot:

1. Be related by blood or marriage to the individual, or any paid caregiver of the individual.
2. Be financially responsible for the individual.
3. Be empowered to make financial or health-related decisions on behalf of the individual.
4. Have a financial interest in any entity paid to provide care to the individual.

A 1915(i) provider cannot complete the WHODAS used to determine an individual's eligibility for the 1915(i) for members they will provide 1915(i) services too.

42 CFR 441.301(c)(1)(vi) disallows providers of 1915(i) HCBS Services to also provide the Care Coordination service which includes the development of the plan of care to the same individual unless the State requests an exception to this regulation and CMS approves the request. The State requested and was granted the following exceptions:

Exception #1: – The member resides in a designated Mental Health Provider Shortage Area.

Mental Health Professional Shortage Areas (MHPSA) are counties with too few mental health providers and services. Designated Mental Health Provider Shortage Areas are identified on the University of North Dakota Center for Rural Health's map located on their website <https://ruralhealth.und.edu/assets/2783-12672/nd-mental-hpsa.pdf>. This map will serve as the official list of Designated Mental Health Provider Shortage Areas for the 1915(i).

At the time of the writing of this policy, the following counties are Designated Mental Health Professional Shortage Areas:

Divide, Williams, McKenzie, Billings, Golden Valley, Slope, Hettinger, Stark, Bowman, Adams, Grant, Oliver, Mercer, Dunn, McLean, Burke, Renville, Bottineau, Rolette, Towner, Cavalier, Ramsey, Walsh, Nelson, Griggs, Pierce, McHenry, Benson Wells, Sheridan, Kidder, Eddy, Foster, Pembina, Steele, Trail, Barnes, Stutsman, Richland, Ransom, Dickey, Sargent, Emmons, Logan, Lamoure, Sioux, McIntosh, and Mountrail.

At the time of the writing of this policy, the following counties are not Designated Mental Health Professional Shortage Areas:

Burleigh, Cass, Grand Forks, Morton, and Ward Counties

What Exception #1 means for a 1915(i) Provider:

A provider may provide both care coordination and other 1915(i) services to the same member when:

- the 1915(i) member resides within a county designated as a Mental Health Professional Shortage Area; and
- the 1915(i) provider implements the protections listed in the Conflict of Interest Protections section below.

Exception #2: The provider is the only willing and qualified provider with experience and knowledge to serve the individual who shares a common language or cultural background.

What Exception #2 means for a 1915(i) Provider:

A provider may provide both care coordination and other 1915(i) services to the same member when:

- The provider must submit a written request to the State Medicaid office providing evidence they are the only willing and qualified provider with experience and knowledge to serve the individual who shares a common language or cultural background; and,
- The State Medicaid office approves the request; and,
- The 1915(i) provider implements the protections listed in the Conflict of Interest Protections section below.

Conflict of Interest Protections

In order to ensure conflict of interest standards are met, the following protections must be in place whenever either Exceptions #1 or #2 are used:

1. The same individual provider within an agency is prohibited from providing the care coordination service which includes developing the plan of care, and also providing other 1915(i) services to the same recipient.
2. Group providers that provide the care coordination service which includes developing the plan of care, and provide other 1915(i) services, must document the use of different individual providers.
3. Providers must receive prior service authorization for all services from the State Medicaid Agency for Traditional Medicaid Members and from the MCO for Expansion Members.
4. The plan of care must indicate that recipients were notified of the conflicts and the dispute resolution process, and that the client has exercised their right in free choice of provider after notification of the conflict.
5. Recipients who receive state plan HCBS from the same agency that provided the assessment or plan of care development are protected by the following safeguards:

- a. fair hearing rights,
 - b. the ability to change providers, and
 - c. the ability to request different professionals from within the same agency.
6. The department will provide direct oversight and periodic evaluation of conflict of interest safeguards.
7. The point of entry to enroll in 1915(i) services are the Human Service Zones. The written agreement between the NDDHS and the Human Service Zones requires them to notify the individual of their right to choose their care coordination provider and their right to appeal, and to assure the Human Service Zone employee determining eligibility is not related by blood or marriage to the individual/participant; to any of the individual's paid caregivers; or to anyone financially responsible for the individual or empowered to make financial or health related decisions on the individual/participant's behalf.
8. NDDHS will require providers to have written conflict of interest standards and written policy to ensure the independence of persons performing developing the individual's plan of care.
9. During the Medicaid eligibility process, the Human Service Zones have the participant sign a Medicaid application which verifies the individual has been informed of their rights and responsibilities with opportunities for fair hearings and appeals in accordance with 42 CFR 431 Subpart E. The Human Service Zones will also provide the participant with a list of available Care Coordination providers for the participant to choose from.
10. The individual's Care Coordinator will also provide written documentation explaining the individual's right to choose providers for each of the services specified on the plan of care and their right to change their Care Coordinator provider or any other 1915(i) service provider at any time. The participant selects all service provider(s) from a list of available service providers.
11. All plans of care must be submitted to the State Medicaid Agency for Traditional Medicaid members and to the MCO for Expansion members.
12. The State will engage in quality management activities to promote adherence to service delivery practices including individual choice and direction in the development of the plan of care, selection of service providers, and preference for service delivery.
13. The member, and their family or guardian when applicable, develop and lead the plan of care team with assistance from the Care Coordinator. The individuals on the team consist of service providers, community supports, and natural supports.

14. The NDDHS will require all providers who assert they are the only willing and qualified provider with experience and knowledge to provide services to individuals who share a common language or cultural background to submit a request to the NDDHS, along with evidence to support the assertion. The NDDHS will review the evidence and either approve or deny the request.
15. In addition to the conflict-free measures identified above, the dispute resolutions include:
 - Individuals, and families when applicable, are given a fact sheet containing their right to choose services and providers, and the following dispute resolution process:
 - If the individual is uncomfortable reporting any problems/concerns to their Care Coordinator, they may contact the Community Behavioral Health Administrator, the Medical Services Division, the MCO, or Protection & Advocacy.
16. Once a Designated Mental Health Provider Shortage Area no longer exists in a given county, the Department prohibits providers from conducting assessments and care plan development from also delivering state plan HCBS other than care coordination.
17. The Department will post information on its website regarding the conflict of interest standards.